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present, and I entirely concur with my colleagues in what they have recorded on that subject. I may add a remark respecting a distinction which appears to be taken by the Subordinate Judge and the Judge below between misjoinder of plaintiffs and misjoinder of claims. There is really no sense or meaning in such a distinction. A plaintiff as such cannot be separated from his claim, and here the claims supposed to have been misjoined are absolutely identical in law and in fact; and even if we had not s. 31 of the Code of Civil Procedure, which provides that "no suit shall be defeated by reason of misjoinder of parties," no intelligible misjoinder could have been shown in the present case. The appeal from the Division Bench must be allowed, and the case remanded under s. 562 for disposal on the merits; costs will abide the result.

OLDFIELD, J.—I adhere to the view I took in my order dated the 2nd February, 1881.

Cause remanded.

APPELLATE CIVIL.

Before Mr. Justice Oldfield and Mr. Justice Brodhurst.

NARSINGH SEWAK SINGH (JUDGMENT-DEBTOR) v. MADHO DAS AND OTHERS
(DECREE-HOLDERS).*

Execution of decree—Act XV. of 1877 (Limitation Act), sch. ii, No. 179 (2)—“Where there has been an appeal.”

The words “where there has been an appeal” in cl. 2, No. 179 of sch. ii of Act XV. of 1877, do not contemplate and mean only an appeal from the decree of which execution is sought, but include, where there has been a review of the judgment on which such decree is based, and an appeal from the decree passed on such review, such appeal.

Held, therefore, where there had been a review of judgment, and an appeal from the decree passed on review, and such decree having been set aside by the appellate Court, application was made for execution of the original decree, that time began to run, not from the date of that decree, but from the date of the decree of the appellate Court.

Sheo Prasad v. Anrudh Singh (1) distinguished.

In March 1873 one Harak Chand Sahu sued one Ajudhia Prasad Singh and Rajnit Kuar, as the mother and guardian of her minor son, Rukman Sewak Singh, in the Court of the Subordinate Judge

* First Appeal, No. 123 of 1881, from an order of Babu Ram Kali Chaudhri, Subordinate Judge of Benares, dated the 1st July, 1881.

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of Benares for certain money. On the 23rd August, 1873, the Subordinate Judge gave him a decree against Ajudhia Prasad Singh and dismissed the suit against the minor. On the 3rd November, 1875, the heirs of Harak Chand Sahu, who had died in the meantime, applied for a review of judgment as regards the dismissal of the suit against the minor. This application was granted and the suit was re-heard, and a decree was given on the 29th November, 1876, to the heirs of Harak Chand Sahu against Narsingh Sewak Singh, as the heir of Ajudhia Prasad Singh, who had also died in the meantime, and against the minor. Being dissatisfied with this decree, the heirs of Harak Chand Sahu appealed to the High Court. On the 28th March, 1879, the High Court held that the review of judgment had been illegally granted, and dismissing the appeal "set aside the judgment and decree dated the 29th November, 1876." On the 17th May, 1880, the heirs of Harak Chand Sahu applied for execution of the decree dated the 23rd August, 1873. No application for execution of this decree had been made after the proceedings for review of judgment were instituted. Narsingh Sewak Singh, judgment-debtor, contended that the application was barred by limitation. The Court executing the decree held that the period of limitation should be computed, under No. 179 (2) of sch. ii of Act XV of 1877, from the 28th March, 1879, the date of the High Court's decree, and the application was therefore within time. The judgment-debtor appealed to the High Court.

Mr. *Spankie* (with him *Munshi Kashi Prasad*), for the appellants, contended that the words in No. 179 (2), sch. ii of the Limitation Act, "where there has been an appeal," mean where there has been an appeal from the decree of which execution is sought. The decree of which execution is sought was not appealed, and time runs therefore from its date. He referred to *Sheo Prasad v. Anrudh Singh* (1).

The *Senior Government Pleader* (*Lala Juala Prasad*), for the respondents.

The judgment of the Court (*Oldfield, J.*, and *Brodhurst, J.*) was delivered by

Oldfield, J.—The question is whether the decree-holder's application for execution of his decree is within time under art. 179,

(1) I. L. R., 2 All. 273.

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sch. ii of the Limitation Act. The decree was passed on the 23rd August, 1873, but a review of judgment was admitted and a decree passed on the 29th November, 1876, by which the original decree was altered. Then an appeal was preferred by the plaintiff from the decree passed on review, and on a cross objection taken by the defendant, the decree made on review was set aside by the High Court on the 28th March, 1879. We are of opinion that time will begin to run from the date of the decree of the High Court, as the final decree of the appellate Court within the meaning of art. 179 (2), sch. ii of the Limitation Act. It was contended that the appeal referred to in that article is an appeal from the original decree only, not an appeal from a decree passed on review of the original decree; but we are of opinion that this is not the case. The article makes limitation run, "where there has been an appeal," from "the date of the final decree or order of the appellate Court," and we think the appeal contemplated is an appeal in the suit, not necessarily an appeal from the original decree in the suit.

Our attention was drawn to a decision of this Court,—*Sheo Prasad v. Anrudh Singh* (1),—but that case is distinguishable from the one before us. In that case there had been no appeal from any decree. We therefore dismiss the appeal with costs.

Appeal dismissed.

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Before Mr. Justice Straight and Mr. Justice Tyrrell.

BASDEO SINGH AND ANOTHER (PLAINTIFFS) v. MATA DIN SINGH AND ANOTHER (DEFENDANTS).*

Regulation XVII of 1806, s. 7—Notice of foreclosure not signed by Judge—Invalidity of foreclosure proceedings.

A notice issued under Regulation XVII of 1806, which does not bear the signature of the District Judge, but bears the seal of his Court only, is informal and bad, and the foreclosure proceedings in which such a notice has issued are invalid *ab initio*.

THE plaintiffs in this suit claimed to enforce a right of pre-emption in respect of a conditional sale of certain shares in two villages

* Second Appeal, No. 775 of 1881, from a decree of Rai Bhagwan Prasad, Subordinate Judge of Azamgarh, dated the 19th March, 1881, affirming a decree of Mirza Kamar-ud-din, Munsif of Azamgarh, dated the 30th September, 1880.